



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 2, 2012

Ms. Linda Pemberton
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2012-15665

Dear Ms. Pemberton:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 466555 (ORR# W008558).

The Killeen Police Department (the "department") received a request for police records related to the requestor and a specified address. You state some responsive information has been released. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

We note the submitted information includes a court document, which is subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of "information that is also contained in a public court record" unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). Although you seek to withhold this information under section 552.108 of the Government Code, section 552.108 is a discretionary exception and does not make information confidential

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 does not make information confidential for the purposes of section 552.022. Therefore, the marked court document may not be withheld under section 552.108 of the Government Code. As you raise no further exception to disclosure for this information, the submitted court document, which we have marked, must be released pursuant to section 552.022(a)(17) of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state some of the remaining information relates to pending criminal cases. Based on your representation and our review, we find release of the information we have marked would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976).

You assert some of the remaining records are excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). You state the records at issue pertain to concluded investigations that did not result in conviction or deferred adjudication. Based on your representations and our review, we find the information we have marked relates to concluded investigations that did not result in conviction or deferred adjudication.

We note, however, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which you state has already been released, the department may withhold the information we have marked under section 552.108 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t

Code § 552.101. This section encompasses information protected by other statutes, such as section 261.201(a) of the Family Code. Section 261.201(a) provides:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

See Fam. Code § 261.201(a). Upon review, we find report number 10-015650 consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had disabilities of minority removed for general purposes). Thus, we agree this information is subject to section 261.201(a). You have not indicated the department has adopted a rule that governs the release of the information at issue in this instance; therefore, we assume that no such regulation exists. Given that assumption, we find report number 10-015650 is confidential under section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, report number 10-015650 must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.²

You seek to withhold the identifying information of complainants in call for service numbers 5074757, 7022740, 7022792, and 8010574 under section 552.101 of the Government Code in conjunction with the informer’s privilege. The informer’s privilege, incorporated into the Act by section 552.101, has long been recognized by Texas courts. *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer’s identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer’s privilege protects the identities of individuals who report

²As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to “administrative officials having a duty of inspection or of law enforcement within their particular spheres.” Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5.

You state the complainants contacted the department to report possible violations of law. You do not indicate, nor does it appear, the subject of the complaints knows the identity of the complainants. Based on your representations and our review, we conclude the department may withhold the identifying information of the complainants in call for service numbers 5074757, 7022740, 7022792, and 8010574, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

In summary, the marked court document must be released pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, which you state has already been released, the department may withhold the information we have marked under section 552.108 of the Government Code. Report number 10-015650 must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department may withhold the identifying information of the complainants in call for service numbers 5074757, 7022740, 7022792, and 8010574, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. The remaining submitted information must be released.³

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

³We note the information to be released includes the requestor’s motor vehicle record information, which the department would be required to withhold from the general public under section 552.130 of the Government Code. See Gov’t Code § 552.130. Because section 552.130 protects personal privacy, the requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code. See *id.* § 552.023(a). We further note the information being released contains the requestor’s social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. *Id.* § 552.147(b). The requestor, however, has a right of access to his own social security number. See *generally id.* § 552.023(b).

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cindy Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/som

Ref: ID# 466555

Enc. Submitted documents

c: Requestor
(w/o enclosures)